

## University of Utah Non-Employee Payments to Nonresident Aliens

### Nonresident Alien Visitors Non-Employee Payments

Visa Types:

- B-1 Business visitor
- B-2 Tourist visitor
- WB Business visitor (through visa waiver program)
- WT Tourist visitor (through visa waiver program)
- J-1 Exchange visitor can pay consultants and independent contractors

### B-1/B-2

WB/WT Visa Visitors:

**Visa Waiver Program (VWP)** WB/WT is issued to an individual from a designated country participating in the Visa Waiver Program.

Andorra	Iceland	Portugal
Australia	Ireland	San Marino
Austria	Italy	Singapore
Belgium	Japan	Slovakia
Brunei	Latvia	Slovenia
Czech Republic	Liechtenstein	South Korea
Denmark	Lithuania	Spain
Estonia	Luxembourg	Sweden
Finland	Malta	Switzerland
France	Monaco	United Kingdom
Germany	Netherlands	* (England, Northern Ireland,
Greece	New Zealand	Scotland and Wales)
Hungary	Norway	Taiwan

What is ESTA? ESTA stands for *Electronic System for Travel Authorization*. ESTA is an online application system developed by the United States government to pre-screen travelers before they are allowed to board an airplane or ship bound for the United States. Starting on January 12, 2009, any person entering the United States under the visa waiver program is required to hold an approved ESTA Travel Authorization.

Who Needs to Apply for ESTA? All travelers entering the United States (by air or sea) under the visa waiver program are required to hold a valid ESTA travel authorization. The purpose of ESTA is to allow DHS to pre-screen all Visa Waiver Travelers before they leave their respective countries. U.S.-bound travelers are recommended to apply for a Travel Authorization at least 72 hours prior to departure.

What is the Visa Waiver Program? The visa waiver program is a U.S. government program that enables citizens and nationals from the 37 Visa Waiver Countries to enter the United States for tourism or business purposes for up to 90 days without obtaining a visa. The advantage of entering the United States under the visa waiver program is that you can travel to the United States on short notice without obtaining a visa.

Canadian individuals are now required to show their passport when they enter the United States. They are considered the same as the B-1/B-2 visa holder unless they enter on a specific visa type.

Honorarium or Guest Lecturer payments on a B-1/B-2 or WB/WT visa require the completion of the Form "Certification of Academic Activity". The individual must certify that they have not accepted Honoraria (or Guest Lecture fees) and/or incidental expense reimburses from more than four institutions of higher education during the past six months or have their activity at that institution exceed nine days.

**Required documents attached to a check request to pay an Honorarium:**

U.S.SSN/U.S.ITIN/Foreign Tax Id No. and Tax Treaty Benefit *No withholding*

1. Visa copy
2. Passport copy
3. W-8BEN
4. **Certification of Academic Activity**
5. Completed Form 8233

U.S.SSN/U.S.ITIN/Foreign Tax Id No. and **no** Tax Treaty Benefit *Required 30% withholding*

1. Visa copy
2. Passport copy
3. W-8BEN
4. **Certification of Academic Activity**

**No** U.S.SSN/U.S.ITIN/Foreign Tax Id No. *Required 30% withholding*

1. Visa copy
2. Passport copy
3. W-8BEN
4. **Certification of Academic Activity**

**Required documents attached to a check request to pay a Guest Lecturer:**

U.S.SSN/U.S.ITIN/Foreign Tax Id No. and Tax Treaty Benefit *No withholding*

1. Visa copy
2. Passport copy
3. W-8BEN
4. **Certification of Academic Activity**
5. Guest Lecturer Form
6. Completed Form 8233

U.S.SSN/U.S.ITIN/Foreign Tax Id No. and **no** Tax Treaty Benefit *Required 30% withholding*

1. Visa copy
2. Passport copy
3. W-8BEN
4. **Certification of Academic Activity**
5. Guest Lecturer Form

**No** U.S.SSN/U.S.ITIN/Foreign Tax Id No. *Required 30% withholding*

1. Visa copy
2. Passport copy
3. W-8BEN
4. **Certification of Academic Activity**
5. Guest Lecturer Form

**J-1 Visa:**

A J-1, exchange visitor visa, is required for Consultants or Independent Contractors to perform services in the United States. To receive a J-1 visa must be sponsored by an institution or agency. **Non University of Utah sponsored J-1 visa holders must also provide a letter of permission from their sponsor that allows them to be paid by the University of Utah.**

**Required documents attached to a check request for payment to a Consultant or Independent Contractor:**

U.S.SSN/U.S.ITIN/Foreign Tax Id No. and Tax Treaty Benefit *No withholding*

1. Visa copy
2. Passport copy
3. Consultant/Independent Contractor agreement
4. W-8BEN
5. Completed Form 8233

U.S.SSN/U.S.ITIN/Foreign Tax Id No. and **no** Tax Treaty Benefit *Required 30% withholding*

1. Visa copy
2. Passport copy
3. Consultant/Independent Contractor agreement

4. W-8BEN

**No** U.S.SSN/U.S.ITIN/Foreign Tax Id No. *Required 30% withholding*

1. Visa copy
2. Passport copy
3. Consultant/Independent Contractor agreement
4. W-8BEN

**Tax Treaties:**

Many countries have negotiated tax treaties with the United States. Treaty provisions vary by country and by the type of payment. Treaties will often be re-negotiated and lose some of their benefits. To receive tax treaty benefits the individual must have a U.S. SSN or a U.S. ITIN and there must be a treaty article covering that type of payment. They also must have a visa that allows the treaty benefit.

**Form 8233:**

This is the IRS form used to apply for the tax treaty benefit. It needs to be completed and signed by the individual who is to be paid. To qualify, the individual must have a SSN/ITIN and an applicable tax treaty. Without **both** of these, we are required to withhold tax at 30% and submit to the IRS.

**Social Security number:**

Many foreign individuals have Social Security Numbers. They will use that same SSN for the rest of their lives, the same as a U.S. individual. This number does not expire.

**Foreign Tax Id Number:**

Under Temporary Treasury Regulations 1441-6T, foreign individuals in certain cases can use Foreign Tax Id Number to claim tax treaty exemption (effective 07/01/2014 - 12/31/2017).

For this type of payment only the J-1 visa holder may apply for a Social Security Number. They must apply in person at the Social Security Office. It may take several weeks for the SSN to be issued. All of the visitor's information must be cleared through the Department of Homeland Security. The B-1/B-2 WB/WT visa types may apply for an Individual Taxpayer Identification Number. The IRS Form W-7 is completed by the individual and sent to the IRS along with the required documents included in the instructions. If an individual qualifies to receive a SSN, they cannot apply for an ITIN.

**Forms 8233 and W-8BEN are available on the [IRS website](#).**

**Certification of Academic Activity is available on the [Tax Services website](#) under "Nonresident Alien Payments".**

**Guest Lecturer Form is available on [FBS Forms](#) under letter G.**

**EXPENSE REIMBURSEMENTS**

Payments made to, or on behalf of an NRA for the purpose of reimbursing travel and lodging expenses are not reportable to the IRS on the condition that accountable plan rules are met. The benefits of this IRS position are that if "Accountable Plan" rules are followed:

1. The NRA is not required to provide a taxpayer identification number
2. The NRA is not required to file Form 8233 to eliminate withholding tax if the NRA is from a treaty country
3. There is no withholding required on travel expense reimbursements even if the NRA is not from a treaty country; and
4. The University is not required to report travel expense reimbursements for NRAs to the IRS

The requirements of the Accountable Plan rules are found in Treasury Regulation 1.62-2; and they require that the payee must:

1. Establish the business purpose and connection of the expenses
2. Substantiate the expenses claimed to the payer within a reasonable time period; and
3. Return any amounts to the payer, which are over the amount of the substantiated expenses within a reasonable period of time.

Amounts which are over the amount of the substantiated expenses, or which are not accounted for within a reasonable time period, are reportable to the IRS on Forms 1042S and are subject IRC Section 1441 withholding (generally 30%).

Documents required for a travel reimbursement to a nonresident alien:

- Copy of their visa
- Travel receipts

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